National Labor Relations Board



Division of Information

Weekly Summary of NLRB Cases

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April 30, 2004		
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General Counsel Memorandum (GC 04-02): General Counsel Responses to Questions
Propounded by the Practice and Procedure
Committee (P&P Committee) of the Labor
And Employment Relations Section of the
American Bar Association

Press Release (<u>R-2527</u>): Rik Lineback Named Regional Director of NLRB's Indianapolis Regional Office

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Baker Concrete Construction, Inc. (12-CA-22027-1; 341 NLRB No. 80) Miami, FL April 19, 2004. The Board adopted the recommendations of the administrative law judge and dismissed the complaint allegations that the Respondent violated Section 8(a)(1) of the Act by interrogating employees about their protected concerted and/or union activities or by threatening them with discharge and Section 8(a)(1) and (3) by laying off and/or discharging six employees because of their protected concerted union activities. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by South Florida Carpenters Regional Council; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Miami, Dec. 4 and 5, 2002. Adm. Law Judge George Carson II issued his decision Feb. 10, 2003.

E. I. Du Pont de Nemours, Inc. (3-UC-499; 341 NLRB No. 82) Tonawanda, NY April 20, 2004. After consideration of the Employer's request for review, the Board reversed the Acting Regional Director's Decision and Clarification of Bargaining Unit in which he found that the newly created position of "PSM quality assurance/quality control receiving examiner" (PSM examiner) is a proper accretion to the existing unit of production and maintenance employees employed by the Employer. [HTML] [PDF]

The Board, in determining whether an employee in a newly created position shares a sufficient community of interest with employees of an existing bargaining unit considers several factors: interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employee skills and functions, supervision, and collective-bargaining history. While the Union maintained that the PSM examiner shared a strong community of interest with unit employees, the Employer contended that the PSM examiner should not be accreted into the unit because it is in essence a technical position not involved with production or maintenance and therefore, does not share a community of interest with unit employees.

The Board agreed with the Employer's argument that the position is more closely aligned with the engineering functions of designing and maintaining the plant processes. While the factors of working conditions, geographic proximity, and wages and benefits favor accretion, the Board noted that they are strongly outweighed by those factors that militate against it. Accordingly, the Board concluded that the PSM examiner should be excluded from the bargaining unit represented by Allied/Industrial Chemical Energy Local I-6992.

(Chairman Battista and Members Schaumber and Walsh participated.)

Nabors Alaska Drilling, Inc. (19-CA-28370; 341 NLRB No. 84) Anchorage, AK April 21, 2004. The Board adopted the administrative law judge's recommendation and dismissed the complaint allegations that the Respondent violated Section 8(a)(1) and (5) of the Act by implementing changes in healthcare coverage for the bargaining unit employees without affording the Alaska District Council of Laborers a reasonable opportunity to bargain about those healthcare changes. In adopting the judge's conclusion, Chairman Battista noted that the Union did not timely demand bargaining regarding the proposed increase in employee contributions. [HTML] [PDF]

(Chairman Battista and Members Liebman and Meisburg participated.)

Charge filed by Alaska District Council of Laborers; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Anchorage on June 11, 2003. Adm. Law Judge Jay R. Pollack issued his decision Aug. 29, 2003.

Superior Protection, Inc. (16-CA-23210; 341 NLRB No. 86) Harris, Montgomery, and Galveston Counties, TX April 23, 2004. The Board denied the Respondent's motion seeking reconsideration of the Board's decision reported at 341 NLRB No. 35 (2004). In that decision, the Board granted the General Counsel's motion for summary judgment and found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing the Union's (United Government Security Officers Local 229) request to bargain and to furnish information following the Union's certification in Case 16-RC-10361. [HTML] [PDF]

In its response to the motion for summary judgment, the Respondent contended the certified unit was no longer appropriate because, in May 2002, after the election and consolidated unfair labor practice/challenged-ballot hearing had been held, the Respondent contracted with the General Services Administration (GSA) to provide security services at eight additional facilities within the geographic scope of the three-county unit. The Respondent claimed that the previously unrepresented employees at the eight new locations outnumbered the unit employees 42-29, and would effectively be accreted to the unit pursuant to the Board's bargaining order. The Board rejected the Respondent's contentions, noting, among others, that "the Respondent does not contend that the two groups of employees have been merged or consolidated, thereby completely obscuring their separate identity."

In its motion for reconsideration, the Respondent claimed that a "cursory inquiry" initiated after receipt of the Board's decision revealed that "at the present time," the two groups have, in fact been "merged and consolidated." However, the Board noted that in order to establish that evidence is "newly discovered," the movant must show facts indicating that it "acted with reasonable diligence to uncover and introduce the evidence" and that it was therefore "excusably ignorant" of the evidence previously. Here, the Board found that the Respondent failed to carry its burden. It held that the Respondent has also not shown that the evidence was unavailable prior to the February 25, 2004 decision. Further, the Board explained why it is not clear that the new evidence would require a different result. Member Schaumber found it

unnecessary to rely on this last analysis because he found that the Respondent had not established that the evidence it seeks to adduce is newly discovered or has become available only after the February 25 decision.

(Members Liebman, Schaumber, and Walsh participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

American Postal Workers Local 735 (an Individual) Wichita, KS March 23, 2004. 17-CB-5444, 5517; JD(SF)-22-04, Judge James L. Rose.

Evans Metal Fabricators, Inc. and Evans Manufacturing & Forming, Inc. (Sheet Metal Workers Local 16) Portland, OR March 25, 2004. 36-CA-9247-1, et al.; JD(SF)-23-04, Judge James M. Kennedy.

Carpenters Local 1027 (Conn-Selmer, Inc., Musser Division) Chicago, IL April 19, 2004. 13-CB-17571-1, JD-34-04, Judge Robert A. Giannasi.

McDonough Power Cooperative (Electrical Workers [IBEW] Local 51) Macomb, IL April 21, 2004. 33-CA-14248, 14362; JD-35-04, Judge Arthur J. Amchan.

Ohio and Vicinity Regional Council of Carpenters (an Individual) Dayton, OH April 21, 2004. 9-CB-10964; JD(ATL)-22-04, Judge William N. Cates.

Farmer Bros. Co. (Teamsters Local 206) Eugene, OR April 22, 2004. 36-CA-9253; JD(SF)-31-04, Judge William L. Schmidt.

NO ANSWER TO COMPLAINT

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Courtyard Manor of Livonia (Service Employees Local 79) (7-CA-47054, et al.; 341 NLRB No. 85) Livonia, MI April 21, 2004. [HTML] [PDF]

Sciarretti Asphalt Paving Co. (an Individual) (6-CA-33749; 341 NLRB No. 83) Braddock, PA April 21, 2004. [HTML] [PDF]

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Aloe Vera of America, Inc., Mission, TX, 16-RC-10533, April 19, 2004

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Good Samaritan Hospital, Los Angeles, CA, 31-RD-1484, April 19, 2004

Five Star Manufacturing, Inc., Crain, MI, 17-RC-12237, April 19, 2004

Property Markets Group, Inc. and 500 West End Avenue Condominium Association, New York,

NY, 2-RC-22782, April 20, 2004

Silver Line Building Products Corp., Lansing, IL, 13-RC-21151, April 20, 2004

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

4MC-Burbank, Inc., Burbank, CA, 31-RC-8195, April 20, 2004

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

West Virginia University Hospitals, Inc., Morgantown, WV, 6-RC-12308, April 20, 2004
Petsmart, Inc., Groveport, OH, 9-RC-17880, April 20, 2004
Steingass Mechanical Contracting, Medino, OH, 8-RC-16293, April 20, 2004
St. Moritz Security Services, Inc., Pittsburgh, PA, 6-RC-12281, 12285, April 20, 2004
The Grand Rapids Press, A Division of the Herald Co., Inc., Grand Rapids, MI, 7-RD-3423, April 21, 2004

(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

MidMichigan Gladwin Pines, Gladwin, MI, 7-RC-22625, April 20, 2004
Berthold Nursing Care Center, Inc. d/b/a Oak Park Nursing Care Center, St. Louis, MO, 14-RC-12485, April 20, 2004

Bergen County Community Action Program, Inc., Hackensack, NJ, 22-RC-12440, April 20, 2004 Entergy Mississippi, Inc., Jackson, MS, 15-UC-149, April 20, 2004 Ameron International Corp., Lakeside, CA, 21-RC-20721, April 20, 2004

Miscellaneous Board Orders

ORDER [granting Employer's request to withdraw its requests for review of Regional Director's Supplemental Decision and Direction of Election and remanding Petitioner's request to withdraw petition to Regional Director for further appropriate action]

Point Blank Body Armor, Oakland Park, FL, 25-RC-10133, April 20, 2004

ORDER [granting Petitioner's withdrawal of the petition]

Peco Energy Company, Philadelphia, PA, 4-RC-20513, April 22, 2004